

- 1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Regional Administrators of EPA. This Consent Order pertains to Operable Unit No. 2 ("OU2") within a property known to EPA as the Ordnance Works Disposal Areas Site in Morgantown, Monongalia County, West Virginia ("Site"), which operable unit was investigated by the Respondents pursuant to an Administrative Order on Consent signed by EPA on June 4, 1990 (EPA Docket No. III-90-16-DC). A more detailed description of the Site, including OU2, is provided in Section III of this Consent Order.

- 1.2 Respondents agree to undertake all actions required by, and comply with all requirements of, this Consent Order including any modifications hereto (the "Work").
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- 1.4 The Respondents consent to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate, and/or eliminate the release or threat of release of hazardous substances at OU2 (as hereinafter described) by preventing the migration of hazardous substances by removing/disposing of hazardous substances from OU2.

III. FINDINGS OF FACT

EPA makes the following findings of fact:

- 3.1 The Ordnance Works Disposal Areas Site ("Site") is located in Monongalia County on the west bank of the Monongahela River approximately one mile south of the City of Morgantown, West Virginia ("Morgantown") (see Attachment A to this Consent Order). The Site consists of numerous tracts of land containing approximately 800 acres purchased by E.I. DuPont de Nemours and Company ("DuPont") between 1940-1943 pursuant to agreements between DuPont and the United States of America (as further described in Section 3.3 of this Consent Order). These agreements additionally provided for the construction and operation of manufacturing facilities. A small portion of this land was used as a disposal ground during operations and later became known to EPA as Operable Unit No. 1 of the Site. The remaining portion of the Site containing, among other things, the manufacturing facilities and undeveloped areas, is known to EPA as Operable Unit No. 2 of the Site.
- 3.2 Operable Unit No. 2 has contained active chemical production facilities since the 1940's. Between 1943 and 1962, the United States held legal title to these facilities. Between 1941 and 1958, various operations were conducted by private parties, in some cases pursuant to government contracts and operating agreements, and in other cases pursuant to

commercial leases. During this time, the facilities were used to produce, among other substances, hexamine, ammonia, methyl alcohol, formaldehyde, ethylene diamine, and coke. As a result of manufacturing operations conducted by others under agreements and leases with the United States, hazardous substances were generated and subsequently disposed at the Site.

- 3.3 Pursuant to various agreements and contracts with the United States, DuPont acquired legal title to the Site in stages beginning in October 1940, and proceeded to construct and operate chemical production facilities at OU2 for the war effort between October 1940 and 1945. Under those agreements and contracts, DuPont transferred legal title to the Site to the United States in December 1943. Between approximately 1940-1945, DuPont operated manufacturing facilities at OU2 which produced, among other substances, ammonia, methanol, formaldehyde, hexamine, ethylene diamine, light oils, and tars.
- 3.4 Between approximately January 1951 and May 1958, Respondent Olin operated manufacturing facilities at OU2 which produced, among other substances, methanol, formaldehyde, ethylene diamine, hexamine, ammonia, light oils, and tars.
- 3.5 Between approximately October 1946 and May 1950, Heyden Chemical Corporation operated the ammonia manufacturing plant at OU2. Respondent Tenneco has agreed to perform the work specified in this Consent Order on behalf of Heyden Chemical Corporation.
- 3.6 As a result of the above-described operations, waste streams were generated and disposed of at OU1 of the Site. Those waste streams contained hazardous substances.
- 3.7 Between 1962 and 1978, the Site was owned by Morgantown Ordnance Works, Inc. During that time, Morgantown Ordnance Works, Inc. leased and/or sold portions of OU2 for various industrial and chemical manufacturing activities. In 1964, Weston Chemical Company ("Weston") purchased a small parcel within OU2 from Morgantown Ordnance Works, Inc. Weston subsequently expanded its operations within OU2. This expansion continued after 1969, when Borg-Warner Corporation ("Borg-Warner") purchased Weston, with the result that Borg-Warner ultimately operated two plants and laboratories on company-owned property amounting to approximately 62 acres within OU2. In 1988, General Electric Company ("GE") purchased Borg-Warner's operations at OU2. The GE facilities are currently active.

- 3.8 Except for parcels previously sold, the Site was acquired by Princess Coals, Inc. in 1978. This company did not actively lease or operate the on-site facilities.
- 3.9 In 1982, the Site was purchased by private individuals who later formed Morgantown Industrial Park, Inc. In 1983, the property was conveyed to Morgantown Industrial Park Associates, Limited Partnership ("MIPA"), the current property owner.
- 3.10 In April 1983, EPA performed a site inspection at OU1 of the Site. The OU1 area was believed to be a former waste disposal and handling area used by the former tenants of industrial facilities located in OU2 of the Site. The OU1 areas investigated included a former landfill, waste lagoons, a "scraped" area, and a drum staging area. The inspection revealed several drums containing polychlorinated biphenyls ("PCBs"); sediments collected from the scraped and landfill areas containing polynuclear aromatic hydrocarbons ("PAHs") at concentrations exceeding 100 ppm; blue pellets collected from the surface of the former landfill containing zinc and copper; and a yellow solid material collected from the scraped area that contained sulphur. Air monitoring results provided no indication of OU1-related airborne hazardous substances.
- 3.11 Between May and June 1984, MSES Consultants, Inc. ("MSES"), under contract to MIPA, performed additional sampling of all drums and subsequently disposed of most of the drums at an approved off-site facility.
- 3.12 In July 1984, EPA performed follow-up sampling to determine the effectiveness of the MIPA response work. Soils in the former drum staging area were found to contain concentrations of PCBs between 6 and 229 ppm; surface soils collected from the landfill and scraped areas and sediments collected adjacent to these areas contained PAHs at concentrations exceeding 700 ppm and 250 ppm, respectively; and inorganic substances such as arsenic, lead, nickel, zinc, chromium, copper, and mercury were identified in concentrations exceeding background levels in surface soils collected from the landfill and scraped areas.
- 3.13 In October 1984, MIPA removed PCB-contaminated soils from the former drum staging area and disposed of these soils at a licensed off-site facility.
- 3.14 Operable Unit No. 1 of the Site was promulgated to the CERCLA National Priorities List ("NPL") on June 6, 1986.
- 3.15 In March 1985, EPA initiated a Remedial Investigation and Feasibility Study ("RI/FS") which focused primarily on

contamination within OU1. During this RI/FS, surface soil and water samples were also collected and analyzed from various locations in and around the complex of process buildings located within OU2 of the Site.

- 3.16 The OU1 RI/FS report, issued in January 1988, documented the presence of hazardous substances, pollutants, and/or contaminants in the landfill, scraped area, and former lagoon areas within OU1. The report additionally indicated that copper, lead, and mercury were detected above background concentrations in a majority of sampling locations within OU2, and that the concentration of mercury found within OU2 exceeded the OU1 risk-based cleanup level at one sampling location.
- 3.17 The discovery of releases and threatened releases of hazardous substances at those locations within OU2 sampled during the OU1 RI/FS caused EPA to suspect that there may be additional releases and/or threatened releases of hazardous substances, pollutants, and/or contaminants into the environment from the OU2 area.
- 3.18 On September 29, 1989, EPA issued a Record of Decision selecting a "preferred" and "contingency" remedial action for OU1 of the Site. The "preferred" remedial action involved, among other things, excavation and treatment of inorganic hotspots from the lagoon and scraped areas; disposal of treated inorganic contaminants at the former landfill area; capping the former landfill; and excavation and treatment of organics-contaminated soils and sediments using bioremediation. The "contingency" remedial action calls for treatment of soils and sediments using soil washing technology. EPA directed Respondent Olin Corporation and Rockwell International Corporation, General Electric Company, and Morgantown Industrial Park Associates to implement this Record of Decision in an administrative order issued by EPA on June 20, 1990 (EPA Docket No. III-90-27-DC).
- 3.19 EPA, the Respondents, and DuPont entered into an Administrative Order on Consent signed by EPA on June 4, 1990 (EPA Docket No. III-90-16-DC) for performance of an RI/FS at OU2 of the Site. The OU2 RI/FS field work was conducted between January and May 1995. For the purposes of the OU2 RI, OU2 was divided into the following nine investigation areas: the storage yard, the former PCB drum staging area, the oil storage area, the shops area, the coke ovens and by-products area, the organics processing area, main process building area, the gas processing area, and the coal residue disposal area (see Attachment B of this Consent Order).
- 3.20 The OU2 RI report, issued in November 1995, identified a number of areas within OU2 where elevated levels of hazardous

substances exceed removal action levels. The analytical data from the RI identified a number of hot spots, the following of which are the most significant:

- (a) Sediment samples from the crane alley in the main process building area contained levels of PCBs up to 8,480 ppm and levels of lead up to 2,400 ppm;
 - (b) Surface soil samples in the main process building area contained levels of lead up to 4,150 ppm;
 - (c) Samples from blue-stained soil in the coke ovens and by-products area contained levels of mercury up to 990 ppm and total PAHs up to 786 ppm; and
 - (d) Samples of sediment from a sump beside the quenching tower in the coke ovens and by-products area contained total PAHs up to 4,947 ppm (including Benzo(a)pyrene at 170 ppm).
- 3.21 The presence of elevated levels of PCBs, lead, PAHs, and mercury within OU2 creates the potential for direct contact to any person or animal that comes in close proximity to OU2. Operable Unit No. 2 contains an active industrial park. Access is not completely restricted. Employees, customers, and trespassers may come in contact with soils containing elevated levels of PCBs, lead, PAHs, and/or mercury.
- 3.22 PCBs, lead, mercury, and PAHs are "hazardous substances" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are identified as hazardous substances at 40 C.F.R. § 302.4.

IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, EPA makes the following Conclusions of Law:

- 4.1 The Site, including OU2, is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 The Respondents are "persons" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 PCBs, lead, mercury, and PAHs are "hazardous substances" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

- 4.4 "Hazardous substances," as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at OU2 and are currently present there.
- 4.5 The presence of hazardous substances at OU2 and the past, present, and/or potential migration of hazardous substances from OU2 constitutes an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 EPA has determined that the Respondents are liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from OU2 may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous substances at or from OU2.
- 5.4 The Work required by this Consent Order is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and CERCLA.
- 5.5 EPA has considered the past uses, and likely future uses, of certain areas identified in the OU2 RI and determines that the Work required by this Consent Order will protect the public health and welfare and the environment so long as such areas are not used for residential or like purposes. EPA intends to seek deed restrictions from the owners of such property to ensure continued protection of the public health and welfare and the environment.

VI. PARTIES BOUND

- 6.1 This Consent Order shall apply to and be binding upon EPA and its agents, and upon the Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of any Respondent, nor a

change in ownership or control of OU2, shall in any way alter the Respondents' responsibilities under this Consent Order.

- 6.2 In the event that any Respondent files for or is placed into bankruptcy, such Respondent shall notify EPA within three (3) days of such an event.
- 6.3 The Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by the Respondents to conduct any portion of the Work to be performed by the Respondents pursuant to this Consent Order. The Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Consent Order.
- 6.4 The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind such Respondent to this Consent Order.
- 6.5 The Respondents are jointly and severally liable for compliance with the provisions of this Consent Order. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one or more of the Respondents to comply with all or any part of this Consent Order shall not in any way excuse or justify noncompliance by any other Respondent. Furthermore, the compliance by one or more of the Respondents with all or part of this Consent Order shall not in any way excuse or justify noncompliance by any other Respondent.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Consent Order has been given to the State of West Virginia pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 The Respondents shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within five (5) business days after the effective date of this Consent Order, the Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcon-

tractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. The Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel, and other persons selected by the Respondents who will conduct all or any portion of the response action no less than five (5) days prior to commencement of the response action to be performed by such persons. The Respondents shall ensure that all contractors, subcontractors, supervisory personnel, and other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform the response action; the Respondents' Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, the Respondents shall notify EPA within ten (10) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) whose selection was disapproved by EPA. If a person's selection for specified work is disapproved by EPA, they shall not perform such work.

- 8.3 The Respondents shall accomplish the following items in accordance with an EPA-approved plan:
- (a) Develop and submit for EPA approval an extent of contamination study work plan which characterizes the concentration and depth of lead and PCB contamination in the soils of the floor of the crane alley in the main process building area ("crane alley");
 - (b) Implement the EPA-approved extent of contamination study described above in (a);
 - (c) Remove and properly dispose or treat all soils contaminated with lead in excess of 1,000 ppm and PCBs in excess of 25 ppm from the dirt floor of the crane alley as identified in the study described in (a) above;
 - (d) Remove and properly dispose or treat all debris, standing water, and sediment from the reportedly lined sump/trench that runs the length of the crane alley (if this sump/trench is not lined, all sediment contaminated with lead in excess of 1,000 ppm and PCBs in excess of 25 ppm shall be removed and properly disposed of or treated);

- (e) Backfill the sump/trench that runs the length of the crane alley and vegetate both the area above the backfilled sump/trench and the crane alley itself;
- (f) Propose a method for EPA approval for sealing the three subgrade utility corridors ("Corridors") outside the former coke ovens in the coke ovens and by-products area;
- (g) Implement the EPA-approved sealing method described in (h) above;
- (h) Remove and properly dispose of or treat all debris, standing water, and sediment from the exterior of the concrete-lined Corridors;
- (i) Backfill and vegetate the exterior of the Corridors to eliminate the existing physical hazard;
- (j) Remove and properly dispose of or treat all debris, standing water, and sediment from the concrete-lined pit on the southeast side of the quench tower in the coke ovens and by-products area;
- (k) Backfill and vegetate the pit on the southeast side of the quench tower in the coke ovens and by-products area to eliminate the existing physical hazard;
- (l) Remove and properly dispose of or treat all debris, standing water, and sediment from all remaining sumps and pits in the coke ovens and by-products area;
- (m) Backfill and vegetate all remaining sumps and pits in the coke ovens and by-products area to eliminate the existing physical hazard;
- (n) Remove and properly dispose or treat all visibly contaminated blue-stained soil areas in the coke ovens and by-products area;
- (o) Excavate and properly dispose or treat soils/sediments from the Main Process Building Area which were identified in the OU2 RI to be contaminated with lead in excess of 1,000 ppm;
- (p) Contain (in a manner that will eliminate risks presented by contact with hazardous substances) or excavate and properly dispose of soils from the Coke Ovens and Byproducts Area which were identified in the OU2 RI to be contaminated with total carcinogenic PAHs ("CPAHs") in excess of 78 ppm. If proposed by Respondents, EPA will

evaluate the use of a soil cover and revegetation to satisfy this requirement;

- (q) Operate and maintain any containment system implemented pursuant to paragraph (p), above;
- (r) Excavate and properly dispose of soils/sediments specifically identified in the OU2 RI and not otherwise described in this Section 8.3 that are contaminated with one or more of the following:
 - (1) lead in excess of 1,000 ppm
 - (2) PCBs in excess of 25 ppm
 - (3) total CPAHs in excess of 78 ppm
 - (4) mercury in excess of 610 ppm.

This Section 8.3(r) does not impose any sampling, excavation, disposal, or other removal obligations at any locations other than those identified in the OU2 RI as contaminated above these levels.

- (s) After completion of the work described in Sections 8.3(c), (d), (n), (o), (p), and (r) of this Consent Order, conduct confirmatory post-excavation sampling to ensure that contamination levels in soils/sediments are below 1,000 ppm lead, 610 ppm mercury, 25 ppm PCBs, and 78 ppm total CPAHs.
- (t) Transport all hazardous substances designated for off-site disposal to an EPA-approved disposal facility in accordance with U.S. Department of Transportation requirements, and assure their proper disposal in accordance with applicable laws and regulations;
- (u) Treat and/or remove and properly dispose of contaminated water generated as a result of the above items (e.g., equipment and sampling-related fluids) in accordance with applicable laws and regulations;
- (v) Provide OU2-specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at OU2, to protect the health and safety of workers, other personnel, and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring

and control of off-site migration of hazardous substances during the performance of activities at OU2, and protection of public health from exposure to hazardous substances during the conduct of activities at OU2 pursuant to this Consent Order. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements including, but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (July 5, 1988); and

- (w) Obtain a Hazardous Waste Generator Identification Number.
- 8.4 Within fifteen (15) business days after the effective date of this Consent Order, the Respondents shall submit to EPA for approval a Response Action Plan ("RAP") detailing the response action to be implemented for the items specified in Section 8.3 of this Consent Order. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval, and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Consent Order. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of Sections 8.5 and 8.9 of this Consent Order.
- 8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval, or such longer time as may be specified in writing by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. Approval, disapproval, and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Section 8.9 of this Consent Order.
- 8.6 Within five (5) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondents shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the

event EPA determines that any portion of the response action performed is deficient, and EPA requires the Respondents to correct or re-perform such portion of the response action pursuant to this Consent Order, the Respondents shall correct or re-perform such response action or portion of the response action in accordance with a schedule provided by EPA.

- 8.7 Beginning fourteen (14) calendar days subsequent to the date of receipt of EPA approval of the RAP, and every fourteen (14) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises the Respondents that the Work is complete, the Respondents shall provide EPA with a progress report for each preceding fourteen (14) day period or, if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum:
- (a) a description of the response action completed and the actions that have been taken toward achieving compliance with this Consent Order;
 - (b) a description of all data anticipated and activities scheduled for the next fourteen (14) calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator;
 - (c) a description of any problems encountered or anticipated, any actions taken to prevent or mitigate such problems, and a schedule for completion of such actions;
 - (d) copies of all analytical data received during the reporting period; and
 - (e) all modifications to the response action, RAP, and schedule made in accordance with Section XIV of this Consent Order during the reporting period.
- 8.8 Documents, including plans, reports, sampling results, and other correspondence to be submitted pursuant to this Consent Order, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX of this Consent Order.
- 8.9 All reports, plans, specifications, schedules, and attachments required by this Consent Order are subject to EPA approval and shall be deemed incorporated into this Consent Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report, or other item required to be submitted under this Consent Order, the approved portion shall be enforceable under this Consent Order. In the event of conflict between

this Consent Order and any document attached hereto, incorporated in, or enforceable hereunder, the provisions of this Consent Order shall control. In the event that EPA disapproves any required submission, EPA will specify the deficiencies in writing to the Respondents. The Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ten (10) business days of receipt of EPA disapproval, or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. If, after review of such revision, EPA continues to disapprove of the submission, EPA may submit its own modifications to the Respondents. In the event that EPA submits its own modifications to the Respondents, the Respondents are hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA.

- 8.10 In addition to the information and documents otherwise required by this Consent Order, and subject to Section 11.5 of this Consent Order pertaining to privileged or protected records and documents, the Respondents shall provide to EPA, upon written request, any and all information and documents in their possession, custody, or control related to OU2 including, but not limited to, analytical data (including raw data); safety data; monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage, or disposal facility); the identity of treatment, storage, and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors, and supervisory personnel used; information and documents concerning the Respondents' compliance with Quality Assurance and Quality Control requirements of this Consent Order; information and documents relating to the Respondents' efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.
- 8.11 Within twenty (20) business days of the date the Respondents conclude they have completed implementation of the RAP and the items identified in Section 8.3 of this Consent Order, the Respondents shall submit a written Final Report to EPA,

subject to EPA approval described in Section 8.9 of this Consent Order. The Final Report shall detail the work undertaken to implement the RAP and the items identified in Section 8.3 of this Consent Order, and shall be certified by the Respondents in accordance with the terms of Section XXII of this Consent Order. EPA will review the adequacy of the Respondents' implementation of the RAP and accomplishment of items specified in Section 8.3 of this Consent Order. EPA will notify the Respondents, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in Section 8.3 of this Consent Order and the actions required to correct such discrepancies or deficiencies. Within ten (10) business days of receipt of notification by EPA, or as otherwise specified by EPA, the Respondents shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in Sections 8.5 and 8.9 of this Consent Order. The Respondents shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.

- 8.12 The Respondents shall not handle or remove any hazardous substances from OU2 except in conformance with the terms of this Consent Order and all applicable Federal, State, and local laws and regulations, as required by the NCP. Any off-Site transfer of hazardous substances, pollutants, or contaminants undertaken to comply with this Consent Order shall meet the requirements of 40 C.F.R. § 300.440 and shall be performed in accordance with any rule or regulation promulgated pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).
- 8.13 The Respondents shall not commence any Work except in conformance with the terms of this Consent Order. The Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to Section 8.6 of this Consent Order.
- 8.14 The Respondents shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Consent Order which causes or threatens to cause an additional release of hazardous substances, pollutants, or contaminants on, at, or from OU2, or which may create a danger to public health or welfare or to the environment.
- 8.15 In the event that EPA believes that response action or other activities at OU2 by the Respondents are causing or may cause

a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 The Respondents shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) calendar days after the effective date of this Consent Order. Designation of a Project Coordinator shall not relieve Respondents of their obligation to comply with the requirements of this Consent Order. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator shall not be their legal representative(s) in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Consent Order, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.
- 9.2 The Project Coordinator for EPA is:
- Melissa Whittington (3HW23)
Remedial Project Manager
U.S. Environmental Protection Agency
General Remedial Section
841 Chestnut Building
Philadelphia, PA 19107
(215) 566-3235
- 9.3 The Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to the Respondents. EPA's intent is to notify the Respondents as soon as practicable following any such change of its Project Coordinator.

- 9.5 The absence of the EPA Project Coordinator from OU2 shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by the Respondents at OU2 in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Consent Order:
- (a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised November 1984));
 - (b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and
 - (c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).
- 10.2 The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

- 11.1 As of the effective date of this Consent Order, the Respondents shall provide to each other and to EPA and its employees, agents, consultants, contractors, and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by the Respondents wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in Section 11.3 of this Consent Order.

- 11.2 The Respondents shall use their best efforts to obtain access agreements from the present owner(s). Such access agreements shall be finalized as soon as practicable but no later than fourteen (14) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondents and their employees, agents, consultants, contractors, and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in Section 11.3 of this Consent Order. In the event that the property owner refuses to provide access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain access. EPA may then take steps to provide access. The Respondents shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.
- 11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants, and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, among other things, inspecting Work, records, operating logs and contracts related to OU2; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording, or other documentary-type equipment; and verifying the data submitted to EPA by the Respondents. Subject to Section 11.5 of this Consent Order pertaining to privileged or protected records and documents, the Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- 11.4 The Respondents may make a claim of business confidentiality for information submitted pursuant to this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to the Respondents.

- 11.5 The Respondents may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document, and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Consent Order including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or documents or information evidencing conditions at or around OU2. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; the identity of treatment, storage, and/or disposal facilities used; the identity of transporters used; or the identity of any contractors or subcontractors used in performing work required by this Consent Order.
- 11.7 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- 12.1 Except as specifically provided elsewhere in this Consent Order, if the Respondents object to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Consent Order, including billings for oversight costs, the Respondents shall notify EPA in writing of their objection(s) within fourteen (14) calendar days of receipt of such notification or action.
- 12.2 EPA and the Respondents shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. EPA may, in its sole discretion which shall not be subject to dispute resolution, extend this period up to fourteen (14) additional calendar days. If agreement cannot be reached on any issue within this fourteen (14) or twenty-eight (28) day period, EPA will provide a written statement of its decision to the Respondents. The Respondents' obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.

- 12.3 In order to prevail in any dispute regarding oversight costs, the Respondents must demonstrate that a mathematical error was made or that the costs were incurred in a manner inconsistent with the NCP.
- 12.4 Following resolution of the dispute, as provided by this Section XII, the Respondents shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that the Respondents do not prevail upon resolution of any dispute involving contested costs, the Respondents shall remit to EPA, within fourteen (14) calendar days of receipt of such resolution, all outstanding oversight costs determined to be owed to EPA, including any accrued interest, as specified in Section 13.1 of this Consent Order.
- 12.5 Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 13.1 For each day, or portion thereof, that the Respondents fail to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Consent Order and to:

EPA Region III Hearing Clerk (3RC00)
841 Chestnut Building
Philadelphia, PA 19107

- 13.2 Stipulated penalties shall accrue in the amount of \$1,000 per day per violation for the first seven (7) calendar days, and

\$2,000 per day for each calendar day thereafter. EPA may, in its sole discretion which shall not be subject to dispute resolution, forego demand for payment of any stipulated penalty under this Section XIII or may delay demand until such time EPA deems appropriate. The accrual of stipulated penalties set forth in this Section XIII shall not preclude EPA from pursuing other penalties or sanctions available to EPA for the Respondents' failure to comply with the requirements of this Consent Order. EPA will not seek civil penalties pursuant to section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for any violation for which a stipulated penalty has been demanded pursuant to Section XIII of this Consent Order, except in the case of a willful violation of this Consent Order.

- 13.3 If Respondents in good faith object to the imposition of stipulated penalties, Respondents may invoke the dispute resolution procedures of Section XII of this Consent Order. Respondents may not, however, dispute the stipulated penalty rates set forth in Section 13.2 of this Consent Order.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- 14.1 The Respondents, through their Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after the Respondents, or any one of them, becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after the Respondents, or any one of them, becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Respondents' Project Coordinator in accordance with Section XXII of this Consent Order and shall fully describe the nature of the delay, including how it may affect the Work, RAP, and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent, and/or minimize the delay will be taken. The Respondents shall ensure that their Project Coordinator provides them with immediate notification of any project delays. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent the Respondents intend to claim that any delay or anticipated delay described by the Respondents in accordance with Section 14.1 of this Consent Order was or will be caused by circumstances beyond each of their control, the Respondents shall, within fourteen (14) calendar days after

the Respondents becomes aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which the Respondents fully demonstrate that the delay was caused by circumstances beyond each of their control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondents took and are taking all reasonable measures to avoid and minimize delay. The Respondents shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of the Respondents pursuant to Section 22.1(b) of this Consent Order.

- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondents or any one of them, and (2) that could not and cannot be overcome by due diligence on the Respondents' part, shall not be deemed to be a violation of the Respondents' obligation(s) under this Consent Order, and shall not subject the Respondents to stipulated penalties under this Consent Order for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondents. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of Sections 14.1 and 14.2 of this Consent Order.
- 14.4 Failure of the Respondents to comply with the notice requirements of Sections 14.1 and 14.2 of this Consent Order shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and the Respondents cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondents that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Consent Order.

XV. RESERVATION OF RIGHTS

- 15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests, and defenses it may otherwise have, and (2) nothing herein shall prevent EPA

from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.

- 15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by the Respondents; to halt Work being performed by the Respondents if the Respondents have not complied with an approved RAP or this Consent Order, or at any time EPA deems necessary to protect public health, welfare, or the environment and to perform such Work; to request and require hereunder that the Respondents correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that the Respondents perform response actions in addition to those required by this Consent Order. In the event EPA requires the Respondents, and the Respondents decline, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Consent Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.
- 15.3 EPA reserves the right to bring an action against the Respondents for recovery of all recoverable costs incurred by the United States related to this Consent Order which are not reimbursed by the Respondents, as well as any other recoverable costs incurred by the United States in connection with response actions conducted at OU2.
- 15.4 This Consent Order concerns certain response actions (Work described in Section VIII of this Consent Order) concerning OU2. Such response actions might not fully address all contamination at OU2. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Consent Order. EPA reserves all rights to institute other legal action in the future against the Respondents and/or any other parties in connection with the performance of any response actions at OU2 not addressed by this Consent Order.
- 15.5 Nothing in this Consent Order shall limit the authority of the EPA Remedial Project Manager as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- 16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from OU2.
- 16.2 This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- 16.3 By consenting to the issuance of this Consent Order, Respondents waive any claim to reimbursement it may have under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612.

XVII. OTHER LAWS

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.
- 18.2 This Consent Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondents to the requirements of Section XIII (Delay in Performance and Stipulated Penalties) of this

Consent Order. Determinations of non-compliance will be made by EPA.

- 18.4 No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of this Consent Order will be construed as relieving the Respondents of its obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondents, or of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by the Respondents in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- 20.1 The Respondents agree to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees, and representatives from any and all causes of action caused by any acts or omissions of the Respondents or their contractors in carrying out the work required by this Consent Order. Nothing in this Consent Order shall be construed in any way as affecting or limiting the rights or obligations of the Respondents or the United States under their various contracts.

XXI. REIMBURSEMENT OF COSTS

- 21.1 EPA shall submit to the Respondents periodic and/or a final accounting(s) of oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants, and other authorized and/or designated representatives in connection with EPA's oversight of the Work.
- 21.2 The Respondents shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of

those costs made payable to the "Hazardous Substance Superfund." Interest at a rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the "Morgantown Ordnance Works Disposal Areas Site-Operable Unit No. 2" and shall be transmitted as specified in Section XIII of this Consent Order.

XXII. CERTIFICATION OF COMPLIANCE

- 22.1 (a) Unless otherwise required by the terms of this Consent Order, any notice, report, certification, data presentation, or other document submitted by the Respondents under or pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning the Respondents' compliance or non-compliance with any requirement of this Consent Order shall be certified by each Respondent, a responsible official of each Respondent, or by the Project Coordinator for the Respondents. The term "responsible official" means:
- (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3); if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

- (b) The written Final Report required by Section 8.11 of this Consent Order, any written notification described in Section 12.1 of this Consent Order, and any "Notice of Force Majeure" described in Section 14.2 of this Consent Order shall be certified by each Respondent or a responsible official of each Respondent.

- 22.2 The certification required by Section 22.1 of this Consent Order shall be in the following form:

I certify that the information contained in or accompanying this (specify type of submission) is true, accurate, and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name (print): _____
Title: _____

- 22.3 Submission of documents pursuant to this Consent Order which are found by EPA to contain false information shall constitute a failure to comply with this Consent Order and shall subject the Respondents to, among other things, stipulated penalties whether or not a responsible official of the Respondents has certified the document.

XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES

- 23.1 The Respondents shall, prior to any off-site shipment of hazardous substances from OU2 to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. The requirement to notify EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.
- 23.2 The notification required by Section 23.1 of this Consent Order shall be in writing and shall include the following information, where available:
- (a) the name and location of the facility to which the hazardous substances are to be shipped;
 - (b) the type and quantity of the hazardous substances to be shipped;
 - (c) the expected schedule for the shipment of the hazardous substances; and
 - (d) the method of transportation of the hazardous substances.

The Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

- 23.3 The identity of the receiving facility and State will be determined by the Respondents. The Respondents shall provide all relevant information to EPA and the receiving State, including information required by Section 23.1 of this Consent Order, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

XXIV. RECORD RETENTION

- 24.1 The Respondents shall preserve all documents and information relating to the Work performed under this Consent Order, or relating to the hazardous substances found at or released from OU2, for six (6) years following completion of the response action required by this Consent Order. In addition, Respondents shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, and subject to Section 11.5 of this Consent Order pertaining to privileged or protected records and documents, the Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.
- 24.2 Neither agreement to, nor compliance with, the requirements of this Section XXIV shall constitute a waiver of any privileges Respondents might wish to assert over documents preserved, collected, or maintained by Respondents and/or requested by EPA.

XXV. DEFINITIONS

- 25.1 "Business days" as used in this Consent Order shall mean every day of the week except Saturdays, Sundays, and federal holidays.
- 25.2 "Calendar days" as used in this Consent Order shall mean every day of the week, including Saturdays, Sundays, and federal holidays.
- 25.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

- 25.4 "RI/FS Consent Order" shall mean the Administrative Order on Consent corresponding to EPA Docket No. III-90-16-DC and which was signed by EPA on June 4, 1990.
- 25.5 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

XXVI. NOTICE OF COMPLETION

- 26.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to Section 8.11 of this Consent Order, that the response action specified in Section VIII of this Consent Order has been fully performed, and upon receipt of costs and penalties assessed by EPA (if any), with the exception of any continuing obligations required by this Consent Order, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), and XXIV ("Record Retention"), EPA will provide a notice of completion ("Notice of Completion") to the Respondents.
- 26.2 The Notice of Completion provided by EPA pursuant to Section 26.1 of this Consent Order shall serve as written notice by EPA, pursuant to Section XXIII.B of the RI/FS Consent Order, that all the terms of the RI/FS Consent Order have been completed. In accordance with Section XXIII.B of the RI/FS Consent Order, such notice shall not terminate the Respondents' obligations under Sections XIII (Record Preservation); XVII (Reservation of Rights); XVIII (Reimbursement of Costs); and XX (Other Applicable Laws) of the RI/FS Consent Order.

XXVII. Reserved.

XXVIII. COVENANT NOT TO SUE

- 28.1 Except as otherwise specifically provided in this Consent Order, upon issuance of the Notice of Completion pursuant to Section 26.1 of this Consent Order, EPA agrees not to sue or take any administrative action against the Respondents for any failure to perform the Work required by this Consent Order.

XXIX. CONTRIBUTION PROTECTION

- 29.1 With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the Parties hereto

agree that Respondents are entitled to protection from contribution actions or claims to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C § 9613(f)(2). Nothing in this Consent Order precludes the United States or the Respondents from asserting any claims, causes of action or demands against any persons not party to this Consent Order for indemnification, contribution, or cost recovery.

XXX. ADMISSIONS

30.1 Nothing in this Consent Order is intended or shall be construed to be an admission as to fact or law (including, but not limited to, EPA's Findings of Fact, Conclusions of Law, and Determinations set forth in Sections III, IV, and V of this Consent Order, or an estoppel or a waiver of defenses by Respondents for any purpose other than enforcement of this Consent Order. Further, participation by Respondents in the removal action required by this Consent Order is not intended to be, and shall not be construed to be, an admission of fact or law with regard to any matter addressed by this Consent Order.

FOR RESPONDENT OLIN CORPORATION:

CEM
9/23/96

Curt M. Richards

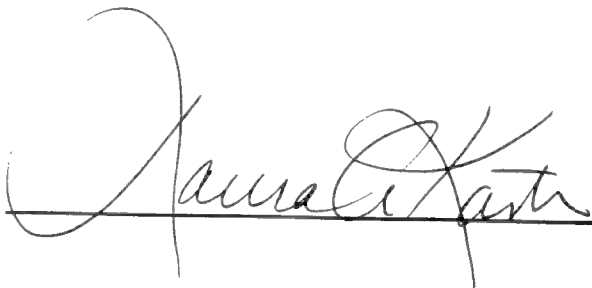
9/24/96
Date

Name: Curt M. Richards

Title: Director of Environmental Remediation

Company: Olin Corporation

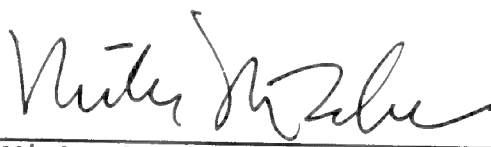
FOR RESPONDENT TENNECO POLYMERS, INC.:



September 24, 1996
Date

Name: Laura A. Kaster
Title: Attorney on behalf of
Company: Tenneco Polymers, Inc.

FOR EPA:

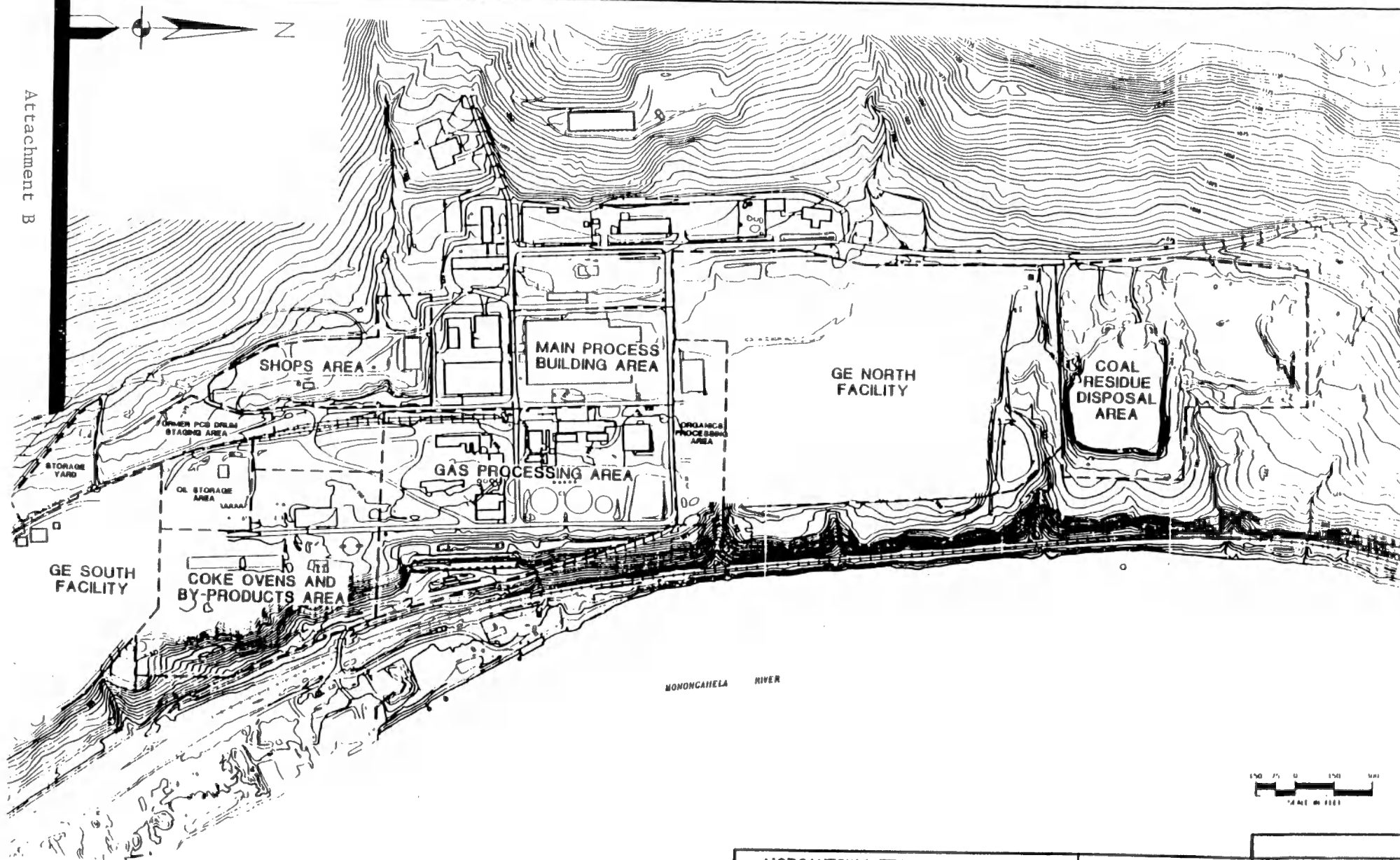


W. Michael McCabe
Regional Administrator
U.S. Environmental Protection Agency
Region III

9/27/96
Date



FIGURE 1



REFERENCE: RADIAN CORPORATION INTERIM
REPORT, REMEDIAL INVESTIGATION
JUNE 1995

MORGANTOWN TECHNICAL COMMITTEE
MORGANTOWN, WEST VIRGINIA

ICF KAISER ENGINEERS
PITTSBURGH, PA

SITE TOPOGRAPHIC MAP
MORGANTOWN ORDNANCE WORKS OU-2

DATE: 9/26/95

DR.: D. MAJERNIK

SCALE: AS NOTED

DWG. NO. BSAMB13